

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

ALPHA SOLUTIONS MANAGEMENT, LLC,

Plaintiff,

V

KODY KOKX,

Defendant.

---

No. 19-000185-CB-C30

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

At a session of said Court held in Lansing,  
Ingham County, Michigan, on May 7, 2020

PRESENT: Honorable Joyce Draganchuk  
Circuit Judge

This was a bench trial held on March 9, 2020. The original Complaint contained two counts, for breach of contract and injunctive relief. During trial, Plaintiff Alpha Solutions moved to add a count for statutory conversion under MCL 600.2919a. The Court found no prejudice to Defendant and pursuant to MCR 2.118(C)(1) granted the motion to amend.

The Court has considered all of the testimony and exhibits as well as the arguments in Alpha Solutions' pre-trial brief and the arguments made at trial.<sup>1</sup> The Court has applied the burden of proof by a preponderance of the evidence to Alpha Solutions.

Chad Reynolds owns Alpha Solutions. The company markets annuities to financial planners who in turn market to investors. Of 12 in-house employees, nine are marketers who sell to financial planners. The marketers identify potential clients through client lead

---

<sup>1</sup> Defendant was self-represented and submitted no pre-trial brief.

lists that are purchased and then maintained by Alpha Solutions. Alpha Solutions purchases “scrubbed” lists from Financial Media Group/Discovery Financial. Alpha Solutions also invests its own employee hours to upload purchased lists to their database. The marketers subsequently maintain the database on a daily basis by making notes on each potential prospect in order to enhance the value of the contacts.

Defendant worked for Alpha Solutions for 4-1/2 years. He signed a Confidentiality, Non-Solicitation, and Non-Competition Agreement in September 2018 (Plaintiff’s Ex. 1). The Agreement provided that Defendant would not disclose Alpha Solutions’ confidential information, including information about clients or prospective clients, and that he would return any such information to Alpha Solutions when his employment ended.

Defendant was described as a magnificent sales person. Reynolds acted as a mentor and father-figure to Defendant. Despite Defendant’s success with Alpha Solutions and close relationship with Reynolds, he decided to leave in December 2018. His stated intent was to work in Florida as a financial planner for one of Alpha Solutions’ clients, John Eickhoff. After Defendant left and moved to Florida, his relationship with Reynolds remained strong and Reynolds helped Defendant as needed.

The relationship with Chad Reynolds ended when Reynolds learned what Defendant was actually up to. Reynolds received a call from a client, Noel Rose, who informed Reynolds that Defendant had stolen client lead lists from Alpha Solutions and was talking bad about Reynolds. Rose confirmed in his trial testimony that Defendant’s feelings about Reynolds had changed dramatically from mentor/father figure to outright hostility. Defendant described Reynolds in the most antagonistic and uncomplimentary terms. He stated to Rose his intent to dismantle what Reynolds had built.

Rose testified that he was willing to take Defendant on as a financial planner, but only if he left Alpha Solutions on good terms. He also said he would only bring Defendant in if he could bring something to his business. Defendant complied with that requirement by providing lead lists of potential financial planner clients to Rose. Just one such client lead list with 250,000 names and contact information was provided by email from Defendant to Rose, Eickhoff, and Brent Crego. Defendant proclaimed: "This is just ONE of the 30 [lists's] I received today with First/Last/Phone/Email for ALL licensed financial service individuals/tax firms/Insurance firms! We can start the email/boiler room with these if we wanted [too]!" (Plaintiff's Ex. 2)

Defendant led Rose to believe that the client lead list he had consisted of people *he* had found, but Rose came to realize that the Defendant misled him about the list. Rose forwarded to Reynolds the email from Defendant along with the attachment of one client lead list (Plaintiff's Ex. 3).

The client lead lists, as Defendant has admitted, were stolen from Alpha Solutions. This was confirmed soon after the call from Rose through Alpha Solutions' IT Department. Defendant downloaded the lists on his last day of work and emailed them to his personal gmail account. He then deleted his inbox and sent mail in an attempt to cover his tracks, but neglected to delete his Chrome browsing history and downloads. He had in fact downloaded Alpha Solutions' lead lists of financial advisors.

The theft of the lists was further confirmed by Joe Sumpter at trial. Sumpter had been a friend of Defendant's for about 10 years. They discussed going into business together in December 2018 and January 2019. Sumpter moved to Florida and began studying to be licensed. He testified that the Defendant gave him hundreds of pages of

sales leads in Georgia and Tennessee. Defendant said that he got them from Alpha Solutions and that he wanted to “destroy Chad” and that “[Alpha Solutions] had no idea how he [Defendant] was going to f--- them over.” Sumpter recognized how wrong this was and he reported it to Rose, who told Sumpter to file a grievance with the State of Florida. Sumpter’s business with Defendant subsequently ended.

Alpha Solutions submitted \$143,200 worth of invoices that it had paid to obtain the scrubbed lead lists from Financial Media Group/Discovery Financial from October 2015 to August 2018 (Plaintiff’s Ex. 4).

In addition to the theft and dissemination of the lists, Reynolds pointed to a loss of Alpha Solutions’ customers as a result of Defendant’s actions. Reynolds testified about three customers specifically and stated that Defendant broke those relationships. Doug Berkey is a financial planner and Alpha Solutions spent money for him to do seminars in Jacksonville, Florida. Following Defendant’s theft of the list, Berkey was standoffish with Reynolds and mentioned this litigation. He is no longer a client of Alpha Solutions. John Eichoff, the individual who Defendant was working with in Florida, refuses to call Reynolds or to do business with him. Reynolds testified that he discovered that John Eickhoff ran his business through Roland Manual. Roland Manual also stopped talking to Reynolds.

Reynolds testified that Alpha Solutions would have received approximately \$50,000 in commissions with these three lost clients. That was a low estimate of the commission that would have been received from approximately \$10,000,000 in production from the three financial advisors.

## **Conversion**

At common law, conversion is any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein. Statutory conversion has an additional element that requires a showing that property was converted to the other person's own use. *Aroma Wines & Equip, Inc v Columbian Distributions Services, Inc*, 497 Mich 337, 358-359, 871 NW2d 136 (2015) and MCL 600.2919a(1)(a).

Defendant admits that the lead lists were the property of Alpha Solutions and that he downloaded those lead lists. The Court finds that Defendant did that wrongfully because the lead lists were the paid-for property of Alpha Solutions. The Court further finds that Defendant converted the lead lists to his own use. Rose testified that he would only bring Defendant on if he could bring something to Rose's business. That "something" was the lead lists that Defendant sent to Rose, Eickoff, and Crego in the email where he bragged that he had 30 such lists with which to start up their business. Whether or not the actual business contemplated ever got going, Defendant successfully used the lists as the "something" that Rose had required.

Statutory conversion also allows for 3 times the amount of actual damages. The Court recognizes that treble damages for conversion are not mandatory and are within the discretion of the trier of fact. There is no set standard for imposing treble damages. Motivation or intent may be pertinent factors. *Hoffenblum v Hoffenblum*, 308 Mich App 102, 117, 863 NW2d 352 (2014).

In his apology letter to Reynolds (Ex. 6) and in his testimony at trial, Defendant maintained that he did not intend to steal from or to destroy Alpha Solutions. His desire

was to start a business that provided tax strategies for business owners and he believed Alpha Solutions' clients would still be paying Alpha Solutions so no harm would be done.

Defendant's explanation standing on its own may make sense, but fails completely when compared to the other testimony. Rose testified to a litany of negative adjectives Defendant used to describe Reynolds. Sumpter also testified that Defendant said he would "f---g destroy Chad."

The Defendant stole the lists by his own admission and if he meant no harm then it is inconsistent to say the least that he tried to hide what he was doing from Reynolds. If there was no harm to Alpha Solutions as Defendant suggested, then why not tell Reynolds what he was doing? He couldn't because Reynolds never would have consented and he would have been upset. Instead, Defendant hid what he was doing.

The difference between his feelings about Reynolds when Defendant worked at Alpha Solutions and his feelings about Reynolds after he left is inexplicable, but the testimony is convincing. Defendant's motivation and intent do not provide any mitigation whatsoever for his actions.

Treble damages are authorized by statute and called for by the facts of this case. The invoices in Ex. 4 support the finding that Alpha Solutions paid \$143,200 for the scrubbed lead lists. Alpha Solutions is entitled to three times that amount, for a judgment of \$429,600 for statutory conversion.

### **Breach of contract**

At trial, Alpha Solutions' position was that breach of contract damages should be awarded only if conversion is not proven. In fact, the damages for conversion and breach

of contract would both be based on the cost to Alpha Solutions of obtaining the lead lists. It would therefore appear that damages for both claims would not be appropriate.

A party claiming a breach of contract must establish (1) that there was a contract, (2) that the other party breached the contract, and (3) that the party asserting breach of contract suffered damages as a result of the breach. *Doe v Henry Ford Health System*, 308 Mich App 592, 865 NW2d 915 (2014).

The Confidentiality, Non-Solicitation, and Non-Competition Agreement prohibits use or disclosure of confidential information, including information about clients or prospective clients of Alpha Solutions, and requires return of such information when employment ends. Accordingly, the Court finds that Defendant breached the Confidentiality, Non-Solicitation, and Non-Competition Agreement, but damages are covered by the conversion damages.

### **Injunctive relief**

A Preliminary Injunction was issued at the inception of this case that enjoined Defendant from using Alpha Solutions' confidential information, soliciting clients or employees of Alpha Solutions, or providing services to a competitor of Alpha Solutions. In its Pre-Trial Brief, Alpha Solutions requested a permanent injunction. At trial, no such request was made. Alpha Solutions is entitled to a permanent injunction to ensure that Defendant does not use the client lead lists in the future or otherwise violate the Confidentiality, Non-Solicitation, and Non-Competition Agreement.

### **Attorney fees**

The Confidentiality, Non-Solicitation, and Non-Competition Agreement Defendant signed includes the following provision:

Attorneys' Fees. If the Company brings a legal action to enforce any provision of this Agreement, the Company will be entitled to recover its reasonable attorneys' fees and costs incurred in connection with that litigation.

Likewise, statutory conversion allows for attorney fees. Reynolds testified that up to the time of trial, Alpha Solutions had paid \$25,000 in attorney fees. An additional amount may be due for the trial time. Alpha Solutions is entitled to these attorney fees, subject to any objection Defendant may wish to raise as to the reasonableness of those fees.

### **Conclusion**

**IT IS HEREBY ORDERED** that judgment shall enter for Plaintiff Alpha Solutions in the amount of \$429,600 for statutory conversion, in addition to whatever costs, interest, and attorney fees Plaintiff may be entitled to.

**IT IS FURTHER ORDERED** that judgment should reflect liability for breach of contract with damages subsumed by the conversion damages.

**IT IS FURTHER ORDERED** that a permanent injunction may enter enjoining Defendant from further use of the client lead lists or in any other way further violating the Confidentiality, Non-Solicitation, and Non-Competition Agreement.

/s/

---

Joyce Draganchuk (39417)  
Circuit Judge

## **PROOF OF SERVICE**

I hereby certify that I served a copy of the above Findings of Fact and Conclusions of Law upon the Defendant and attorney of record for Plaintiff by placing said document in sealed envelopes addressed to each and depositing same for mailing with the United States Mail at Lansing, Michigan, on May 7, 2020.

/s/

---

Michael Lewycky  
Law Clerk/Court Officer